THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Shree Dhanvarsha Steels Limited
D-36-39, UPSIDC Industrial Area,
Jasodharpur, Kotdwara, Uttarakhand

Vs

The Executive Engineer,
Electricity Distribution Division,
Uttarakhand Power Corporation Ltd.
Kotdwara, Uttarakhand.

Representation No. 05/2012

Order

The petitioner, M/s Shree Dhanvarsha Steels Ltd., D-36-39, UPSIDC Industrial Area, Jasodharpur, Kotdwara, Uttarakhand approached the office of the Ombudsman on 17.02.2012 against the order of the Consumer Grievance Redressal Forum, Garhwal zone (hereinafter referred to as Forum) dated 30.12.2011 upholding imposition of peak hour penalty of Rs. 14,15,630.00 upon the petitioner by the Uttarakhand Power Corporation Ltd. (hereinafter referred to as respondent) in the bill for July 2011.

2. The petitioner is an industrial consumer of the respondent with a contracted load of 3000 KVA at UPSIDC Industrial Area, Jasodharpur, Kotdwar manufacturing MS Ingots. The petitioner claims that he was regularly paying electricity bills raised by the respondent and was not in arrears. The respondent sent a bill for the month of July 2011, wherein in column 16 for misc. charges they had shown *'Ref no. penalty transfer revised Pk. Hr. penalty'* for an amount of Rs. 14,15,630.00. On being asked for an explanation, the respondent did not give any clarification but threatened the petitioner with disconnection of his electric supply if the amount was not deposited.

3. In his petition, the petitioner has stated (a) whenever there is scheduled rostering, the Executive Engineer of the division informs the consumers. No such intimation was

given regarding rostering during the months of January, February or March 2010. Had this been done they would have followed the instructions. Moreover, if they were using more than 15% of their contracted load then their supply would have been cut off from the substation. As an example, the petitioner gave reference of a letter dated 06.04.2010 issued by the Executive Engineer informing about the rostering schedule and claimed that after receiving this letter they followed the instructions; (b) It is mandatory for the respondent to provide a summary report of MRI along with the monthly bills. If MRI report had been provided with the bill of January 2010 and penalty had been imposed in the same bill they would have not used power during scheduled rostering period in the next month; and (c) There were many occasions during 19.01.2010 to 31.03.2010 on which in spite of using power during scheduled rostering period penalty was not imposed.

4. When clarification was sought from the Executive Engineer, he informed that when power was available during the rostering period, control had allowed use of power and when it was not available then use of power during rostering period attracted penalty. The petitioner maintains, therefore, there was no scheduled rostering and rather it was unscheduled rostering which was to be informed each and every time to the consumer, which was not done.

5. The petitioner filed a complaint before the Forum on 29.08.2011. The petitioner moved an application, on 19.09.2011, for interim stay against the demand of the respondent. The Forum passed its order on 30.12.2011 dismissing the complaint of the petitioner. The petitioner then approached the Ombudsman. The petitioner mentioned that he had requested vide his letter dated 24.01.2012 that he may be permitted to deposit the peak hour penalty in three installments and had deposited Rs. 5,00,000.00 as first installment vide cheque dated 30.01.2012.

6. The petitioner claims that the Forum failed to appreciate the fact that for consumption during peak hours the petitioner was only liable to pay the higher charges of Rs. 4.80 per unit as per the Uttarakhand Electricity Regulatory Commission (hereinafter referred to as UERC) Regulations. The same have been paid by him for consumption during peak hours for the month of February and March 2010. The petitioner also maintains that the newspaper cuttings submitted by the respondent were with respect to power cuts to be imposed by the respondent and does not mention any application

of restricted hours, nor mention any order of UERC imposing restriction in the usage nor do they mention that the violation would attract penalty. The letter of the Executive Engineer dated 06.04.2010 (referred above) cannot be taken as a notice to the petitioner about violation of the restriction period during January to March 2010. Stating that the order of the Forum was wrong, the petitioner has requested that the order be set aside and the respondent be asked to refund the amount of Rs. 5,00,000.00 deposited by the petitioner or adjust the same in the bill of the petitioner for the coming months. He has also requested that the petitioner should be given compensation for harassment and inconvenience.

7. The respondent stated that the petitioner was served the bill for violation of scheduled rostering as per RTS-7 (6) (iii). As no separate column is provided in the Performa of the bill, the penalty was included under the column misc. charges and bill for penalty amount describing it as 'abstract of penalty amount' was attached to the bill. The respondent maintained that the scheduled rostering program, duly approved by UERC, was notified for the general public including the petitioner, in prominent newspapers. As evidence, copies of newspapers Amar Ujala and Times of India cuttings dated 20.01.2010 were provided. Regarding the petitioner's contention that he had already made payment of higher charges @ Rs. 4.80 for consumption of energy during peak hour and hence could not be charged any penalty, the respondent maintained that this payment has nothing to do with the use of power in excess of 15% of the contracted load during restricted hours in the scheduled rostering program approved by UERC. The penalty has been charged as per the provisions of RTS-7 (6) (iii).

8. The respondent also stated that the petitioner was aware of the rostering program and had complied with the restrictions on certain days in January, February and March 2010. The respondent claims that the phrase 'peak hour' is one which has been commonly used in the electricity department for the words 'restricted hours' as has been done in this case. They claimed that the words 'restricted hours' appearing in RTS-7 (6) (iii) mean 'peak hour' and the penalty for violation of peak hour is provided in the Tariff. As the program for rostering/load shedding under section 23 of the Electricity Act was approved by UERC, provisions of RTS-7 (6) of the Tariff were attracted and penalty was leviable accordingly. The RTS – 7 provisions provide:

6. Continuous and Non-continuous supply

(iii) Consumers not opting for continuous supply (Non-continuous supply) shall not be allowed to use power in excess of 15% of their contracted demand during restricted hours of the period of restriction in usage approved by the Commission from time to time. For such consumers Energy charge, Demand charge and other charges as per rate of charge given above shall be applicable. However, any violation detected in usage of power during restricted hours (above 15% of contracted load) shall attract a penalty, continuous supply surcharge and other terms as specified below:

a) There shall be graded penalty for violation of load during restricted hours of each day beyond a limit of 15% of Contracted Demand (rounded off to next higher integer) based on the following two factors:

- *Quantum of load used beyond of 15% in each time slot (30 minutes duration) of restricted hours*
- *No. of time slots during which violation occurred in restricted hours*

b) For each time slot of restricted hours penalty shall be zero for load upto 15% and shall be proportional to load beyond this limit.

(c) Caution: Industrial consumers are cautioned that even under this moderated graded penalty, consumption of power beyond 15% would be prohibitively expensive and hence, they are advised to restrict the consumption during the period of restriction within the said limit.

9. Regarding delay in raising the bill, respondent claims that it took considerable time to develop the KCC Online Software Module. A long period was taken in developing the software and studying the individual load survey reports/feeding the data of individual consumers on the system. Thereafter time was taken in seeking approval from the GM (Commercial) for the penalty bill and only after completing all these formalities the penalty bills were served on the consumers. The respondent also maintains that the petitioner has not suffered due to delay in submitting the penalty bill but, on the other hand has benefited financially from paying the penalty amount late.

10. The Forum in their judgment dated 30.12.2011 have stated that the scheduled rostering had been duly approved by UERC for the period 21.01.2010 to 31.03.2010

and UPCL published the same in leading daily newspapers on 19.01.2010. The information was also communicated to various Industrial Associations. The schedule of rostering was also displayed on the website of the respondent. Hence the claim of the complainant regarding ignorance of scheduled rostering for the period 21.01.2010 to 31.03.2010 cannot be considered valid. The penalty has been charged by UPCL in accordance with UERC approved rate schedule. The respondent has also informed that in addition to the publication they had informed the consumer a number of times to observe the rostering schedule personally on phone. The respondent also informed that there were 22 consumers like the complainant situated in the vicinity and five of them had fully complied with the notification. 17 consumers violated the rostering schedule but 12 out of the 17 admitted that they had violated and deposited the penalty bill. Another two deposited penalty bills under protest. Notification of newspaper is on the record and complainant cannot be granted any relief on this ground. Thus, the Forum held that penalty as per tariff provision is due to be paid by defaulting consumers. Since M/s Shree Dhanvarsha Steels Ltd. has violated the scheduled rostering program they were liable to pay due penalty charges as per tariff provisions.

11. Brief facts of the case are that in January 2010, the respondent was directed by the UERC to approach the UERC for approval of scheduled load shedding in the State. UERC permitted restrictions from 21.01.2010 to 31.03.2010 (1700 hours to 2400 hours) for induction furnaces and rolling mills. About one and half years later the respondent issued bills, claiming the penalty amount for peak hour violations, to a number of industries including that of the petitioner. The petitioner objected to the imposition of penalty and approached the Forum which did not give him the relief sought and subsequently he approached the Ombudsman.

12. The respondent in January 2010 applied to UERC vide their letter dated 15.01.2010 for scheduled load shedding in the State with a proposed area wise rostering schedule. UERC, in exercise of its power u/s 23 of the Electricity Act, 2003 vide their order dated 18.01.2010 approved for the period 21.01.2010 to 31.03.2010 (a) area wise power cuts/rostering (b) restriction in usage beyond 15% of contracted load during restricted hours for non continuous industry consumers being supplied from industrial and independent feeders at 132 KV, 33 KV or 11 KV emanating from primary and

secondary substations including SIDCUL Haridwar/Pantnagar and Induction Furnaces and Rolling Mills. UERC further directed that 'irrespective of individual drawals on industrial feeders during restricted hours, UPCL shall be at liberty to cut the feeder, if the situation so warrants, in case the overall loading on the feeder is more than 15% of the total contracted load of all the consumers on the feeder, provided, that such feeder shall not be cut if continuous supply consumer(s) is/are connected to that feeder.' It was also clarified by UERC that in case of improvement in availability of power during scheduled/unscheduled power cut, UPCL shall grant corresponding relief to consumers and gradually reduce load shedding for them.

13. UERC directed UPCL to take out the full MRI dump with load survey and submit the same to UERC by 15.04.2010. UERC further ordered that (i) UPCL should publicise the schedule to the consumers through public notice in at least one English and two Hindi daily newspapers having wide circulation in the State and stated that the notified scheduled cut/restriction period would become applicable only on or after the date of publication of such notice. They also directed that the notice must contain all the terms and conditions apart from area wise rostering schedule and (ii) UPCL shall intimate the approved plan to the Industrial Associations individually immediately on receipt of UERC's approval.

14. On receipt of the approval of their proposal, with minor modifications, from UERC, the respondent issued public notice in the Amar Ujala (19.01.2010) and Times of India (20.01.2010). The respondent also wrote to GM (Distribution) to communicate the same to all their subordinate offices and paste a copy of the schedule on the notice board of their offices. A copy of this letter of respondent dated 19.01.2010 was also marked to President of different Industry Associations at Dehradun, Udham Singh Nagar and Roorkee.

15. During arguments, the petitioner raised the following points (a) the respondent did not implement the order of UERC as approved by them in their order dated 18.01.2010 as they did not mention the various conditions laid down by UERC while approving the proposal of the respondent. Penalty for violation should have been clearly mentioned in the publication; (b) the respondent was not clear regarding restricted hours, rostering/load shedding; (c) the petitioner claimed that the respondent's local staff usually informed them in case of rostering and the same was not done in this case; (d)

as per the UERC order of 18.01.2010, a copy of the MRI and load survey should have been provided to the consumer being billed for violation of the restrictions imposed on certain categories of industrial consumers; (e) signatures were not available on a number of copies of the abstract bills. In fact as per the dates on the abstract penalty bills these were verified and signed in September 2011 while the bill was raised in the month of July 2011; (f) no penalty bill was given to the consumer only reference of penalty amount was made in the bill for July/August 2011; and (g) Petitioner has maintained that there was no justification for raising the bill after a gap of almost two years and claimed that such charges were time barred.

16. I have heard the arguments and examined the various documents. While it is admitted that there have been a number of errors by the respondent in the way the preparation of the bills has been handled, it needs to be made clear that such bills cannot be treated as time barred as section 56 (2) of the Electricity Act provides that bills can be submitted up to two years after the period when they became due.

17. The argument by the petitioner that the respondent did not mention the various conditions laid down by the UERC, in the newspaper publication cannot be used as an excuse for violating the rostering schedule as penalties are clearly laid down in the Tariff Order.

18. The argument that the respondent was not clear regarding restricted hours, rostering/load shedding does not excuse the petitioner from violating the rostering schedule published by the respondent. While the petitioner's claim that the newspaper cutting was titled notice for power cut, the body of the notice mentioned that industries falling under sr. 10 and 11 of the notice were to use only up to 15% of their sanctioned load. Hence, whatever the terminology used, it would be proper to grasp the essence of the notice published by the respondent. The notice clearly stated that from 21.01.2010 to 31.03.2010 the industries were to use only up to 15% of their contracted load, sr. 10 'induction furnaces and rolling mills' between 1700 to 2400 hrs and sr. 11 'all industrial consumers being fed through industrial and independent feeders except dedicated continuous category consumers' from 1800 to 2300 hrs. The Tariff Order is very clear regarding the penalty for such violations.

19. As per the approval taken by the respondent from the UERC there was an effort to conserve electricity due to shortage of power with the respondent. With this purpose in mind the respondent had requested UERC to permit them to (a) impose restrictions during certain hours on certain types of industries and (b) carry out area wise rostering/load shedding during certain periods of the day on the rest of the consumers. The petitioner in the present case is covered under sr. 10 of the publication which relates to 'all induction furnaces and rolling mills'.

20. Lack of knowledge of the restrictions, therefore, cannot be taken as an excuse for overdrawal. Publicity regarding the restrictions was wide spread as besides publication in newspapers, information about the restrictions was also displayed on the website of the respondent and letters were sent to all industrial associations in the State.

21. Regarding the claim of the petitioner that they were not informed individually each day regarding the restrictions, it needs to be made clear that while information given by the local staff of the respondent is a courtesy being extended to the consumer, in view of wide spread publicity it was not necessary that each consumer be informed individually each day.

22. The petitioner's claim that MRI and Load Survey report was not provided with the abstract penalty bills, is correct, however copy of MRI reports were provided subsequently to the petitioner when demanded from the respondent. The penalty charged by the respondent is in accordance with the rate schedule approved by UERC.

23. On examination of the MRI and Load Survey reports provided, it is clear that the petitioner violated the restrictions imposed on his category of consumers and hence is liable to pay the penalty amount for such violation.

24. Meanwhile, the respondent informed UERC on 08.02.2012 that 'their field officers had confirmed that there was drifting in clock in the meters of some industrial consumers for the period from 21.01.2010 to 31.03.2010'. The respondent recommended that 'the benefit of clock drifting may be allowed to the consumers who used power during restricted hours only maximum of one time slot in a day either first slot or last slot during the entire period of restrictions'. UERC vide their letter dated 05.03.2012 approved that 'the benefit of clock drifting for one slot to the consumers

till the meter clock are synchronized should be allowed.' In view of the orders of UERC, the benefit of clock drifting for violations in one time slot either at the beginning or the end during the restricted hours has to be applied wherever relevant for each day during the period 21.01.2010 to 31.03.2010.

25. In the present case of M/s Shree Dhanvarsha Steels Ltd. there were violations in various slots between 1700 hrs to 2400 hrs during the period 21.01.2010 to 31.03.2010. However on certain days the violations were only in the first half hour i.e. the beginning slot (1700 hrs to 1730 hrs) or in the last half hour i.e. the last slot (2330 hrs to 2400 hrs). In view of the orders of UERC dated 05.03.2012 that benefit of clock drifting for one slot at the beginning/end be given to the consumer, the respondent should review the penalty amount and deduct the penalty charged for the days where the violation was only for the beginning or the last slot. In view of the above, order of the Forum is set aside and respondent directed to issue revised penalty bill within 15 days. The petitioner is directed to pay the revised penalty amount within 15 days of the receipt of the same.

(Renuka Muttoo)
Dated: 25.09.2013 Ombudsman